

## Message Text

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ACTION SNM-05

INFO OCT-01 NEA-10 ISO-00 DEAE-00 L-03 PPT-01 CA-01  
/021 W

-----059201 260722Z /17

P 260615Z JUL 78  
FM AMEMBASSY KABUL  
TO SECSTATE WASHDC PRIORITY 9252

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E.O. 11652: N/A  
TAGS: SNAR, AF  
SUBJECT: AFGHAN NARCOTICS LAWS

REF: STATE 170187

1. THERE FOLLOWS THE INFORMATION CURRENTLY AVAILABLE CONCERNING THE AFGHAN NARCOTICS LAWS IN FORCE BEFORE THE APRIL 27 REVOLUTION. WE CANNOT BE CERTAIN, HOWEVER, WHETHER THESE LAWS WILL BE KEPT IN FORCE BY THE NEW GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN (DRA). BECAUSE CONSIDERATION OF THIS GROUP OF LAWS IS CURRENTLY BEING GIVEN A LOW PRIORITY BY DRA OFFICIALS, IT MAY BE SOME TIME BEFORE THE LEGAL SITUATION BECOMES CLEAR HERE. PENDING THE COMPLETION OF THIS REVIEW, AFGHAN OFFICIALS APPEAR TO BE UTILIZING THE PRE-REVOLUTIONARY LAWS, BUT APPLYING THE PENALTIES MORE STRICTLY THAN THEIR PREDECESSORS. RESPONSES ARE KEYED TO THE QUESTIONS POSED IN THE REFTEL.

2. POSSESSION:

(A) PRE-REVOLUTIONARY AFGHAN LAW DID NOT DISTINGUISH BETWEEN POSSESSION OF MARIJUANA, COCAINE,  
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HEROIN, OR OTHER CONTROLLED SUBSTANCES.

(B) THERE WAS NO QUALIFYING AMOUNT FOR THE OPERATION OF AN OFFENSE, ALTHOUGH THE LEGAL PENALTY IN EACH CASE VARIED WITH AMOUNT OF DRUG DISCOVERED.

(C) AS AFGHAN LAW DID NOT DISTINGUISH BETWEEN

POSSESSION AND OTHER TYPES OF OFFENSES (E.G., TRAFFICKING), PENALTIES FOR POSSESSION COULD BE AS SEVERE AS PENALTIES FOR OTHER NARCOTICS-RELATED CRIMES. JUDICIAL AUTHORITIES HAD MUCH LATITUDE IN DECIDING THE PUNISHMENT IN ANY NARCOTICS CASE.

3. TRAFFICKING:

(A) AFGHAN LAW DID NOT DIFFERENTIATE ACCORDING TO SUBSTANCE. IN AFGHANISTAN, NARCOTICS CRIMES WERE GROUPED UNDER THE "CUSCOMS LAW" AND THE "ANTI-SMUGGLING LAW". ARTICLES THIRTY-SIX AND THIRTY-SEVEN OF "CUSTOMS LAW" PROHIBITED THE IMPORTATION AND EXPORTATION OF OPIUM, MORPHINE, COCAINE, MARIJUANA, HASHISH, AND OTHER SIMILAR SUBSTANCES, WITH THE EXCEPTION OF THOSE DRUGS WHICH HAD THE APPROVAL OF THE MINISTRY OF PUBLIC HEALTH, OR PROCEEDED THROUGH AFGHANISTAN BY VIRTUE OF AGREEMENTS WITH OTHER GOVERNMENTS. ARTICLE ONE OF THE "ANTI-SMUGGLING LAW" DEFINED SMUGGLING AS "THE PRODUCTION, IMPORTATION, EXPORTATION, PURCHASE, SELE, KEEPING OR TRANSPORTATION OF CONTROLLED SUBSTANCES." IN CONSEQUENCE, ALL DRUGS AND DRUG OFFENSES WERE CONSIDERED UNDER THE SAME LAW, WITH THE SAME PENALTIES.

(B) IF VALUE OF THE NARCOTIC EXCEEDED TEN LIMITED OFFICIAL USE

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THOUSAND AFGHANIS (APPROXIMATELY TWO HUNDRED AND SIXTY DOLLARS AT CURRENT RATE OF EXCHANGE), THE ARRESTEE RECEIVED A MANDATORY SENTENCE OF ONE TO SIX YEARS' IMPRISONMENT. THIS SENTENCE COULD HAVE BEEN REDUCED ON APPEAL TO HIGHER COURTS, BUT COULD NOT HAVE BEEN CONVERTED INTO A FINE. IF THE VALUE WAS BELOW TEN THOUSANDS AFGHANIS, THE ARRESTEE COULD HAVE BEEN FINED.

(C) AS INDICATED IN ITEM 3-A, AFGHANISTAN DID NOT DIFFERENTIATE BETWEEN TRAFFICKING AND POSSESSION.

(D) YES. ARTICLE FOURTEEN OF "ANTI-SMUGGLING LAW" STATED THAT "WHEN THE ACT OF SMUGGLING IS COMMITTED BY COLLUSION OF THREE OR MORE PERSONS, THE CONVICTED PERSONS SHALL RECEIVE THE MAXIMUM IMPRISONMENT PRESCRIBED UNDER ARTICLE THIRTEEN, "WHICH WAS SIX YEARS IN JAIL.

4. CULTIVATION:

(A) GROWING THE OPIUM POPPY WAS PROHIBITED BY LAW, BUT THERE WAS NO SPECIFIED PENALTY FOR THIS CRIME.

THERE WAS NO LAW AGAINST GROWING MARIJUANA OR COCA,  
ALTHOUGH THE LATTER SUBSTANCE IS NOT INDIGINOUS TO  
AFGHANISTAN. THE LAW REGARDING POSSESSION, WITH  
THE PENALTIES DESCRIBED IN ITEM 3-B ABOVE, COULD,  
IN THEORY AT LEAST, HAVE BEEN APPLIED AGAINST GROWING.

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(B) SEE ITEM 3-B ABOVE. METHODS OF CONTROL  
INCLUDED OCCASIONAL ERADICATION OF POPPY FIELDS  
AND SEARCHES OF TRAVELERS AT AIRPORTS AND BORDERS.

(C) SEE ITEMS 3-B AND 3-D ABOVE.

5. FINANCIAL:

(A) THERE WAS NO LAW RELATING TO FINANCIAL  
SUPPORT FOR DRUG TRAFFICKING, ALTHOUGH THE CON-  
SPIRACY LAW, AS DESCRIBED IN ITEM 3-D ABOVE,  
COULD IN THEORY HAVE APPLIED. THERE APPEARS TO  
BE LITTLE CONCERN OR INTEREST IN AFGHANISTAN  
REGARDING THE FINANCIAL ASPECTS OF THE ILLICIT  
NARCOTICS TRADE.

(B) SINCE THE REVOLUTION OF APRIL 27, AFGHAN  
GOVERNMENT HAS BEEN OFFICIALLY PROHIBITING THE  
EXPORTATION OF MORE THAN TWO HUNDRED DOLLARS BY  
ITS CITIZENS. THIS PROHIBITION, HOWEVER, IS NOT  
APPLIED UNIFORMLY. WHETHER IT WOULD HAVE MUCH  
IMPACT ON DRUG TRAFFICKING IS DOUBTFUL.

6. CRIMINAL PROCEDURE:

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(A) THE PERIOD OF INVESTIGATIVE DETENTION LASTED APPROXIMATELY THIRTY DAYS. SENTENCES, ONCE IMPOSED, WERE CALCULATED FROM FIRST DAY OF IMPRISONMENT. CONSULAR ACCESS WAS PERMITTED. THE EMBASSY NORMALLY LEARNED ABOUT AN ARREST FROM THE EMBASSY'S DEA OFFICER. THE EMBASSY DID NOT RECEIVE OFFICIAL NOTIFICATION FROM THE AFGHAN AUTHORITIES UNTIL SEVERAL WEEKS AFTER ARREST.

(B) CUSTOMARY LENGTH OF PRE-TRIAL DETENTION WAS FOUR TO SIX WEEKS.

(C) TRIALS LASTED ONE OR TWO DAYS. THE LENGTH OF REVIEW AND CONFIRMATION PROCEEDINGS WAS THREE TO SEVEN DAYS. UNDER AFGHAN LAW, ARRESTEE COULD APPEAL THE VERDICT OF THE FIRST NARCOTICS COURT TO A SECOND COURT, AND THEN TO A THIRD COURT. THE DECISION OF THE THIRD COURT WAS FINAL. THE APPEAL PROCESS LASTED ONE TO TWO MONTHS.

(D) THERE WAS NO PUBLIC DEFENDER. FEW LAWYERS UNDERTOOK NARCOTICS CASES. LAWYERS ADVISED EMBASSY THAT THEY COULD DO LITTLE TO ASSIST NARCOTICS OFFENDERS, WHO GENERALLY WENT TO TRIAL WITHOUT PROFESSIONAL LEGAL ASSISTANCE.

(E) BAIL WAS NOT POSSIBLE IN NARCOTICS OFFENSES.

(F) UPON PAYMENT OF FINE AND RELEASE FROM JAIL, THE AFGHAN GOVERNMENT REQUIRED THE ARRESTEE TO LEAVE COUNTRY. HOWEVER, THERE APPEARED TO BE NO PROVISION PREVENTING AN OFFENDER FROM REENTERING AFGHANISTAN, ONCE EJECTED.

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7. EMBASSY WILL POUCH RELEVANT NARCOTICS LAWS TO THE DEPARTMENT UNDER COVER OF AIRGRAM.  
DUBS

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## Message Attributes

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